

IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.23 - RULES OF ADMINISTRATIVE PROCEDURE BEFORE THE BOARD OF ENVIRONMENTAL QUALITY

DOCKET NO. 58-0123-0901

NOTICE OF INTENT TO PROMULGATE RULES - NEGOTIATED RULEMAKING

AUTHORITY: In compliance with Section 67-5220, Idaho Code, and IDAPA 58.01.23, Rules of Administrative Procedure Before the Board of Environmental Quality, Sections 810 through 815, notice is hereby given that this agency intends to promulgate a rule and desires public participation before publishing a proposed rule. This rulemaking action is authorized by Sections 39-105, 39-107 and 67-5206, Idaho Code.

METHOD OF PARTICIPATION: Those interested in participating in the negotiated rulemaking process are encouraged to attend the following meeting. For those who cannot participate by attending the meeting, information for submitting written comments is provided at the end of this notice.

MEETING SCHEDULE: The negotiated rulemaking meeting will be held as follows. Additional meetings may be scheduled if necessary. For information regarding participation by telephone or scheduling of additional meetings, contact the undersigned. Requests to participate by telephone must be made by September 21, 2009.

WEDNESDAY - SEPTEMBER 23, 2009 - 9 a.m. to 12 Noon

**DEPARTMENT OF ENVIRONMENTAL QUALITY
Conference Room D
1410 N. Hilton, Boise, Idaho**

PRELIMINARY DRAFT: By September 2, 2009, a preliminary draft of the rule can be obtained at http://www.deq.idaho.gov/rules/admin/58_0123_0901_negotiated.cfm or by contacting Paula Wilson at paula.wilson@deq.idaho.gov, (208)373-0418.

DESCRIPTIVE SUMMARY: This rulemaking has been initiated to make revisions to the Rules of Administrative Procedure Before the Board of Environmental Quality for clarification purposes and for consistency with the Idaho Administrative Procedure Act (APA) and the Environmental Protection and Health Act. The text of the rule will be drafted by the Department of Environmental Quality (DEQ) in conjunction with a negotiating committee made up of persons having an interest in the development of this rule. The preliminary draft rule will include the following proposed revisions:

1. Section 052. Revisions made for consistency with Section 67-5273, Idaho Code.
2. Section 303. Revisions made to provide flexibility that would allow potential parties to enter into a tolling agreement.
3. Sections 353 through 355. Revisions made for clarity and to provide a time limit within which an intervenor, once granted permission to intervene, may file its response to the petition for contested case.
4. Section 720. Revisions made for clarity, to streamline the process, for consistency with Section 730, and for consistency with Sections 67-5244 and 67-5273, Idaho Code.
5. Section 730. Revisions made for clarity, to streamline the process, for consistency with Section 720, and for consistency with Sections 67-5245 and 67-5273, Idaho Code. Revisions made to this section remove the Board's discretion to hear petitions for review of preliminary orders. The APA does not provide discretion as to whether or not an agency will hear a petition for review.
6. Sections 740, 750, and 801. Revisions made for consistency with Section 67-5273, Idaho Code.
7. Section 790. Revisions made for consistency with Section 67-5270, Idaho Code.
8. Section 791. Revisions made for clarity and for consistency with Sections 39-107(6) and 67-5273, Idaho Code.
9. Section 860. Revisions made for clarity and for consistency with Section 39-107(6), Idaho Code.

This rulemaking docket may also include other revisions identified during the negotiated rulemaking process as necessary for maintaining consistency within the rule chapter.

Citizens of the state of Idaho and representatives of regulated industry having an interest in the procedures for obtaining Board review of an action of DEQ may be interested in participating in this rulemaking. Upon conclusion of negotiations, DEQ intends to publish a proposed rule for public comment in December 2009 or January 2010 and then present the final proposal to the Board of Environmental Quality for adoption of a pending rule in 2010. If adopted by the Board, the pending rule will be reviewed by the 2011 Idaho Legislature.

ASSISTANCE ON TECHNICAL QUESTIONS AND SUBMISSION OF WRITTEN COMMENTS: For assistance on questions concerning this rulemaking, contact Paula Wilson at paula.wilson@deq.idaho.gov, (208)373-0418.

For those who cannot participate by attending the scheduled meeting, written comments may be submitted by mail, fax or e-mail at the address below. Written comments on the preliminary draft rule must be received by September 25, 2009. For information regarding submission of written comments on subsequent drafts of the negotiated rule, to receive copies of submitted written comments, and to receive the most recent version of the draft negotiated rule, contact the undersigned.

Dated this 10th day of August, 2009.

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